

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

<b>TruePosition, Inc.,</b>	)	
	)	
<b>Plaintiff/</b>	)	
<b>Counterclaim-Defendant,</b>	)	
	)	<b>Civil Action No. 05-747-SLR</b>
<b>v.</b>	)	
	)	
<b>Andrew Corporation,</b>	)	
	)	
<b>Defendant/</b>	)	
<b>Counterclaim-Plaintiff.</b>	)	
<hr/>		

**APPENDIX C  
TO  
TRUEPOSITION'S REPLY MEMORANDUM IN SUPPORT OF ITS  
MOTION FOR PARTIAL SUMMARY JUDGMENT THAT ANDREW  
CANNOT PROVIDE ITS CLAIMS OF INVALIDITY  
C1-C24**

CONNOLLY BOVE LODGE & HUTZ LLP  
Francis DiGiovanni (# 3189)  
James D. Heisman (# 2746)  
1007 N. Orange Street  
P.O. Box 2207  
Wilmington, DE 19899  
Telephone: (302) 658-9141  
Facsimile: (302) 252-4208

WOODCOCK WASHBURN LLP  
Paul B. Milcetic, Esq. (pro hac vice)  
Dale M. Heist, Esq. (pro hac vice)  
David L. Marcus, Esq. (pro hac vice)  
Kathleen A. Milsark, Esq. (pro hac vice)  
Daniel J. Goettle, Esq. (pro hac vice)  
Cira Center, 12<sup>th</sup> Floor, 2929 Arch Street  
Philadelphia, PA 19103  
Telephone: (215) 568-3100  
Facsimile: (215) 568-3439

## **APPENDIX C**

**TO**

**TRUEPOSITION'S REPLY  
MEMORANDUM IN SUPPORT OF ITS  
MOTION FOR PARTIAL SUMMARY  
JUDGMENT THAT ANDREW CANNOT  
PROVE ITS CLAIMS OF INVALIDITY**

**C1 – C24**

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<b>v.</b>	)	
	)	
<b>Andrew Corporation,</b>	)	
	)	
<b>Defendant/</b>	)	
<b>Counterclaim-Plaintiff.</b>	)	
<hr/>	)	

**TRUEPOSITION'S RESPONSE TO  
ANDREW'S REQUESTS FOR ADMISSION**

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure, TruePosition, Inc., hereby responds and objects to Andrew Corporation's Requests for Admission. TruePosition reserves all objections to the competency, relevancy, materiality, or admissibility at trial of any response to the propounded interrogatories, or to any document produced in response thereto, and reserves the right to amend, modify, or supplement its responses or objections herein, or to move for a protective order.

68. TruePosition never declared the '144 patent essential IPR to any ETSI or 3GPP specification or standard.

**RESPONSE:**

TruePosition objects to this request because the phrase "essential IPR" is undefined.

To the extent an answer is required, TruePosition admits that it has never asserted that that the 144 Patent is "Essential IPR" within the meaning of ETSI's IPR Policy, to ETSI, 3GPP or anyone else, and otherwise denies this request.

69. TruePosition never declared the '144 patent to ETSI or 3GPP as essential IPR to the practice of U-TDOA.

**RESPONSE:**

TruePosition objects to this request because the phrase "essential IPR" is undefined.

To the extent an answer is required, TruePosition admits that it has never asserted that that the 144 Patent is "Essential IPR" within the meaning of ETSI's IPR Policy, to ETSI, 3GPP or anyone else, and otherwise denies this request.

70. Exhibit E is a Japanese reference bearing reference number 3-239091 (the "Kono reference").

**RESPONSE:**

TruePosition admits that Andrew has attached as Exhibit E to these requests a copy of a document written in Japanese, and otherwise denies this request.

71. Exhibit F is a true and correct English translation of Exhibit E.

**RESPONSE:**

Denied.

72. The Kono reference's Application Filing Date was February 16, 1990 (see Exhibit F).

**RESPONSE:**

Admitted. For clarity, TruePosition avers that it does not agree that Exhibit F is an accurate English translation of Exhibit E.

73. The Kono reference's Laid-Open Publication Date was October 24, 1991 (see Exhibit F).

**RESPONSE:**

Admitted. For clarity, TruePosition avers that it does not agree that Exhibit F is accurate English translation of Exhibit E.

Dated: October 30, 2006

/s/ Daniel J. Goettle

Dale M. Heist (pro hac vice)  
Paul B. Milcetic, Esq. (pro hac vice)  
David L. Marcus, Esq. (pro hac vice)  
Kathleen A. Milsark (pro hac vice)  
Daniel J. Goettle, Esq. (pro hac vice)  
**WOODCOCK WASHBURN LLP**  
One Liberty Place - 46th Floor  
17th and Market Streets  
Philadelphia, PA 19103  
(215) 568-3100

Rudolf E. Hutz, Esq. (#484)  
James D. Heisman, Esq. (#2746)  
**CONNELLY BOVE LODGE & HUTZ LLP**  
The Nemours Building  
1007 North Orange St.  
PO Box 2207  
Wilmington, Delaware 19899  
(302) 658-9141

*Attorneys for Plaintiff TruePosition, Inc.*

**CERTIFICATE OF SERVICE**

I, Daniel J. Goettle, hereby certify that on this 30th day of October, 2006, I served the foregoing TruePosition's Response to Andrew's Requests for Admission:

***Via Electronic Mail, Return Receipt Requested***

Patrick D. McPherson, Esq.  
Duane Morris LLP  
1667 K Street, N.W.  
Washington, DC 20006-1608  
PDMcPherson@duanemorris.com

Josy W. Ingersoll, Esq.  
Young Conaway Stargatt & Taylor, LLP  
The Brandywine Building  
1000 West Street, 17th Floor  
Wilmington, DE 19801  
jingersoll@ycst.com

Rachel Pernic Waldron  
Kirkland & Ellis LLP  
200 East Randolph Drive  
Chicago, IL 60601  
rpernicwaldron@kirkland.com

/s/ Daniel J. Goettle  
Daniel J. Goettle

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Counterclaim-Defendant,	)	C.A. No. 05-747 (SLR)
	)	
v.	)	
	)	
Andrew Corporation,	)	
	)	
Defendant/	)	
Counterclaim-Plaintiff.	)	
_____	)	

**EXPERT REPORT OF BRIAN G. AGEE, PH.D., P.E.  
RESPONSE TO DR. DAVID GOODMAN'S REPORT ON THE VALIDITY  
OF U.S. PATENT NO. 5,327,144 [Corrected]**

**C5**

tion, such that the majority of individuals with ordinary skill in the art in the disciplines listed above worked outside of the cellular telephone industry.

### 3.3 Opinions

As noted in Section 1, I disagree with Dr. Goodman's conclusion that Kono anticipates the asserted claims of the 144 Patent. In my expert opinion, Kono fails to teach one having ordinary skill in the art at the time of the invention, either expressly or inherently, numerous limitations in the asserted claims of the 144 Patent. My ultimate conclusion is the same under either of the parties proposed constructions of certain claim terms in the 144 Patent.

In addition, in my expert opinion, Kono is not enabling because its disclosure would not allow a person of ordinary skill in the art at the time the 144 Patent was filed to make and use the inventions in the asserted claims of the 144 Patent without undue experimentation, and with a reasonable expectation of having the systems and methods work. It is also my expert opinion that a person having ordinary skill in the art at the time the 144 Patent was filed could not make and use the system disclosed and described in Kono without undue experimentation, and with a reasonable expectation of having the system work. Moreover, in my expert opinion, Kono contains substantive deficiencies that would prevent it from providing usable position location information in any realistic cellular telephony use scenario.

Lastly, in my expert opinion, the prior art considered during the examination of the 144 patent teaches the same material disclosed in Kono, in much greater detail than Kono, and is therefore just as pertinent to the 144 patent as Kono, if not more pertinent. In particular, three of the patents considered during the 144 Patent prosecution, and one of the patents cited by the U.S. Patent Office in its Office Action during this Prosecution (the Sagey 618 Patent), teach every element of the subject matter disclosed in Kono.

The Sections and Tables below present my opinion in further detail. Section 3.3.1 states my conclusions regarding the relation of Kono to the asserted claims of the 144 Patent. Section 3.3.2 states my opinion of Kono's failure to enable and other deficiencies in Kono. Section 3.3.3 states my opinion of Kono being no more pertinent than the prior art considered during examination of the 144 Patent. Section 3.3.4 discusses other matters pertinent to my opinion.

#### 3.3.1 Opinions Relating to Kono and the Asserted Claims of the 144 Patent

A summary of my conclusions regarding the deficiencies in Kono's teachings to one having ordinary skill in the art at the time of the claimed invention and the limitations in the asserted claims of the 144 Patent is provided in Table 3-1 through Table 3-5 below, for asserted Claim 1 (Table 3-1), 2 (Table 3-2), 22 (Table 3-3), 31 (Table 3-4) and 32 (Table 3-5) in the 144 Patent. My detailed opinions supporting these conclusions is provided in Subsection 3.3.1.1 through Subsection 1, for asserted Claim 1 (Subsection 3.3.1.1), 2 (Subsection 3.3.1.2), 22 (Subsection 3.3.1.3), 31 (Subsection 3.3.1.4), and 32 (Subsection 3.3.1.4) in the 144 Patent.

In forming my opinions, I am relying upon the separate Claim Constructions provided by Andrew on 22 November 2006 ("Andrew Claim Constructions"), and provided by TruePosition on 11 December 2006 ("TruePosition Claim Constructions"). Because these Claim Constructions are different, I provide a separate conclusion under each Claim Construction in these Tables. In cases where a specific Claim limitation is not defined by Andrew, but can be constructed from multiple Andrew Claim Constructions, I am assuming that limitation comprises all of those Claim Constructions, e.g., I interpret "reverse control channel" to be constructed from Andrew's Claim Constructions for "reverse" AND "control channel." In cases where neither Andrew nor TruePosition has proposed a Claim Construction, I provide an opinion based on the ordinary and customary meaning for each term. Lastly, in several instances, I disagree with Andrew's Claim Constructions, and/or find that they contain substantive ambiguities that I must resolve in order to make a conclusion about the element addressed by that Claim. A list of these disagreements and ambiguities, and of my interpretation of ambiguities, is provided in Subsection 3.3.4.1 (Table 3-7).

In forming my opinions, I am principally relying on TruePosition's translation of the original (Japanese language) version of the specification of Kono into English (TruePosition Kono Translation), and on the Lexis translation of the abstract of Kono into English (Kono Abstract Translation). This is because (a) I do not understand the Japanese language, in either its written or spoken form, and (b) Andrew's translation of Kono possesses significant deficiencies, most notably in its failure to translate Kono's Figures into English. A listing of differences between these translations that I have currently recognized is provided in Subsection 3.3.4.2 below.

		<p>a circuit to inform a user at the receiving end that a message is to be sent. <i>[citations omitted]</i></p> <p>Using this definition, signaling information is interpreted here as control information that is provided by the telecommunications network, to set up and manage the network, inform user receiver that a message is to be sent, or otherwise control communications of the network.</p>
Time stamp bit	Time stamp representing the exact time the frame of data was created.	<p><b>Disagreement:</b> The ordinary and customary meaning of this phrase does not include any time of creation limitation; it is simply information indicating a point or points in time that is or are relevant to a particular application. In the case of the 144 Patent, the claim language immediately following this phrase expressly addresses what point in time the time stamp bits represent. Thus, there is no need to add a time of creation limitation to this phrase, and doing so renders the claim redundant and confusing.</p> <p><b>Ambiguity:</b> The term "created" is not defined. In particular, since the "frame of data" referred to here contains both data bits and time stamp bits, the "exact time the frame of data was created" could be anywhere from when the data bits within the "frame of data" were created by sampling the received cellular telephone signal, to when the time stamp bits were combined with those data bits to create the final frame of data.</p> <p><b>Interpretation:</b> The "exact time the 'frame of data' was created" is interpreted here to be the exact time that the received cellular telephone signal was sampled to create the data bits contained within the "frame of data."</p>
Initiating	Causing or bringing about	<p><b>Disagreement:</b> In my expert opinion, there is no special technical meaning for "initiating," "causing," or "bringing about" that a person of ordinary skill in the art might be familiar with; in particular, none of these terms are defined in FS-1037C, and the term "initiating" is never specifically defined in the 144 patent. I see no justification for replacing a word that employed with its ordinary and customary usage in the 144 patent, with another word or phrase that has ordinary and customary usages that may be potentially different in some contexts.</p> <p><b>Ambiguity:</b> Both "causing" and "bringing about" have differing ordinary and common usages in differing contexts.</p>
Timing signal	Signal that is provided to all cell sites to generate a time stamp for each frame of data.	<p><b>Disagreement:</b> In the 144 Patent claims each cell site possesses a timing signal <i>receiver</i>, which provides time stamp bits representing the time at which cellular telephone signals are received. In the preferred embodiment of the 144 patent, and in Claim 2 of the 144 patent, the timing signal receiver is a GPS receiver, which processes <i>multiple</i> GPS emissions (signals generated external to the cellular telephone network, from multiple global positioning system satellites) to generate time stamp bits <i>independently</i> at each base station.</p>

#### 3.3.4.2 Identified Deficiencies in the Andrew Kono Translation

In my consideration of the Andrew Kono Translation, I encountered a number of differences between the Andrew and TruePosition translation. A partial list of these differences is summarized as follows.

- Failure to provide translations of the Figures. This, of course, was the key factor in my decision to principally rely on the TruePosition translation rather than the Andrew translation in my formulation of this report.

- Use of term "shared" (Andrew) versus "common" (TruePosition) channels for transmission on position location signals
- Use of term "Solving" (Andrew) versus "Resolved" (TruePosition).
- Use of term "shared channels allotted jointly to the base station" (Andrew) versus "commonly allocated common channel" (TruePosition). Note, the TruePosition interpretation sounds much more like a description of an air interface.
- A key sentence in Kono reads:

"The mobile equipment 5 stands by to receive the signal with strongest electrical field from among the radiated position locating call signals radiated by the base station 3a, using the control channel, and when this position location call signal is received, it immediately transmits a response signal switching to a shared channel and emitting a position locating signal which is a burst digital signal."

in Andrew's translation, and reads:

"From among the calls for position location for the mobile unit 5, while standing by on the control channel having the strongest electrical field, which is that from base transceiver station 3a, it immediately transmits a response and switches to the common channel and transmits a position location signal in the form of a digital burst signal."

in TruePosition's translation. The TruePosition translation implies that *two* responses are sent from the mobile: a response to the base station's request for a position location signal, followed by the position location signal itself. I interpreted this first response to be an acknowledgement of the request, which is typically performed on a reverse link control channel, which underscored the point that the system *has* a reverse link control channel that is *not* the common channel used for transmission of the position location signals. In contrast, Andrew's translation implies that a *single* signal is sent: the position location signal.

#### 3.3.4.3 Other Disagreements with the 144 Patent Invalidity Report

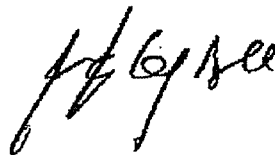
I disagree with the following additional assertions in Dr. Goodman's 144 Patent Invalidity Expert Report, in addition to those disagreements provided in the previous Sections.

Goodman characterizes AMPS, IS-54, and IS-95 as familiar to persons skilled in the art in 1993. I disagree with this assertion, based on my definition of one skilled in the art in 1993. I would instead say that information on these signals was available in 1993, and could be accessed and learned by persons of ordinary skill in the art.

Discussion of the meaning of "analog control channels" is completely irrelevant. The 144 patent clearly and obviously teaches means for exploiting both analog and digital control channels, specifically refers to digital 10 kbps Manchester encoded channels (used in AMPS reverse control channels, as Goodman shows in Figure 3.10, pg. 9 of his own report), and devotes an entire section (Section 2, column 14, line 45, through column 16, line 2, and Figure 7A) to exploitation of digital reverse control channels. Moreover, the preferred embodiment taught in Figure 6 would work with analog or digital signals. Lastly, the Claims do not refer to digital or analog nature of reverse link control channels

02 January 2007

Dated



Brian G. Agee, Ph.D., P.E.



Brian G. Agee, Ph.D. January 24, 2007

<p style="text-align: right;">Page 18</p> <p>1 A Excuse me.</p> <p>2 Q -- it actually is signed on January 2, but</p> <p>3 was submitted to us on January 3.</p> <p>4 So if I refer to Agee Exhibit 2 as your</p> <p>5 January 2 report, will you understand what I mean and</p> <p>6 would that be okay with you?</p> <p>7 A Yes.</p> <p>8 Q Do your December 22 and January 2 reports</p> <p>9 reflect all of your opinions in this case regarding</p> <p>10 Kono and the '144 patent?</p> <p>11 A No.</p> <p>12 Q Did you intentionally leave any of your</p> <p>13 opinions regarding Kono or the '144 patent out of your</p> <p>14 report?</p> <p>15 A No.</p> <p>16 Q What opinions regarding Kono or the '144</p> <p>17 patent do you have that are not expressed in your</p> <p>18 expert reports?</p> <p>19 A Probably two additional opinions.</p> <p>20 Q What are those two additional opinions?</p> <p>21 A The first is fairly minor. In one of the</p> <p>22 sections on the Kono not being -- in the section on</p> <p>23 Kono not being enabling, I made one assertion which</p> <p>24 does not change my ultimate opinion; and, in fact,</p> <p>25 doesn't change my ultimate opinion on that point.</p>	<p style="text-align: right;">Page 20</p> <p>1 that.</p> <p>2 Q That's fine.</p> <p>3 A Okay.</p> <p>4 So on Page 13 of the January 3 report -- I</p> <p>5 apologize; I may call this the January 2 or the</p> <p>6 January 3 report from time to time -- stating -- with</p> <p>7 a subsection stating, "Kono fails to disclose or teach</p> <p>8 means for processing said data frames from cell site</p> <p>9 systems, to generate a table."</p> <p>10 Q That's the element?</p> <p>11 A Yes.</p> <p>12 Q And how has your opinion regarding that</p> <p>13 element changed?</p> <p>14 A Again, my ultimate opinion regarding that</p> <p>15 element has not changed. But, once I was familiarized</p> <p>16 with the principle of equivalence, I needed to go back</p> <p>17 and look through that element and interpret both</p> <p>18 Stilps and Kono in the light of the principle of</p> <p>19 equivalence.</p> <p>20 So, I reformulated a new opinion based on</p> <p>21 that.</p> <p>22 Q What prompted you to formulate a new</p> <p>23 opinion regarding the means for processing limitation</p> <p>24 in Claim 1 of the '144 patent?</p> <p>25 MR. MARCUS: Objection. Asked and</p>
<p style="text-align: right;">Page 19</p> <p>1 But I made one assertion that I had -- I</p> <p>2 felt I needed to do more analysis on. And, so, I did</p> <p>3 an estimation analysis and realized that it was</p> <p>4 technically incorrect. So there's one paragraph in</p> <p>5 that that I don't feel is true anymore and I want to</p> <p>6 remove.</p> <p>7 And then in the section relating to Claim</p> <p>8 1, one aspect of the legal terminology that I</p> <p>9 wasn't -- that I wasn't made familiar with was the</p> <p>10 concept of equivalence, and the principle of</p> <p>11 equivalence.</p> <p>12 And since the January report was submitted,</p> <p>13 I was made familiar with the concept of equivalence;</p> <p>14 and, it caused me to change, again, not my ultimate</p> <p>15 opinion or my opinion on this point, but it caused me</p> <p>16 to change my argument and my reasons for that opinion</p> <p>17 for one of the elements of my opinion that Claim 1 is</p> <p>18 not anticipated by Kono.</p> <p>19 Q Which element are you referring to?</p> <p>20 A May I refer to my report?</p> <p>21 Q You can refer to anything you like, Dr.</p> <p>22 Agee.</p> <p>23 A Okay.</p> <p>24 In regard the January 2 report, I also have</p> <p>25 a color copy of that report. I'd like to refer to</p>	<p style="text-align: right;">Page 21</p> <p>1 answered.</p> <p>2 A I'm sorry, could you repeat the question?</p> <p>3 Q Sure. What prompted you to change your</p> <p>4 opinion regarding the means for processing limitation</p> <p>5 in Claim 1 of the '144 patent?</p> <p>6 MR. MARCUS: Same objection.</p> <p>7 A Yeah, again, I did not change my opinion</p> <p>8 of -- of this element of the '144 patent.</p> <p>9 Q You testified that you -- you learned of</p> <p>10 equivalence subsequent to submitting your January</p> <p>11 report; correct?</p> <p>12 A Could you repeat the question?</p> <p>13 Q Sure. You testified that, after submitting</p> <p>14 your January report, you then learned of equivalence;</p> <p>15 is that right?</p> <p>16 A That is correct.</p> <p>17 Q How did you come to learn of equivalence</p> <p>18 after submitting your January report?</p> <p>19 A David Marcus informed me that he had</p> <p>20 neglected to inform me of the principle of equivalence</p> <p>21 and then told me what that was.</p> <p>22 Q What did he tell -- what did Mr. Marcus</p> <p>23 tell you regarding the principle of equivalence?</p> <p>24 A Roughly -- and this is in my terms as an</p> <p>25 engineer, not as a lawyer, so I'm not going to</p>

6 (Pages 18 to 21)

MERRILL LEGAL SOLUTIONS

Tel: (800) 868-0061 (312) 263-3524

C10

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Brian G. Agee, Ph.D. January 24, 2007

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1 guarantee that I got this a hundred percent right --  
 2 but the gist of it was that two structures which  
 3 perform equivalent -- which perform an equivalent  
 4 function are equivalent under a means plus -- a means  
 5 plus structure claims construction.

6 So if -- if a function can be performed  
 7 using two different structures, then -- and using two  
 8 different structures, then you have to assume that  
 9 they're the same from an anticipation viewpoint.

10 And I think at this point I just diverged  
 11 from my legal knowledge into some legal -- from my --  
 12 I think I just -- I think I just overran my legal  
 13 knowledge.

14 So, from my viewpoint, if two structures  
 15 were equivalent, then I had to -- two structures were  
 16 equivalent, then I had to consider them. And I had  
 17 not been considering them, when I wrote my initial  
 18 opinion.

19 Q Did Mr. Marcus tell you anything else about  
 20 equivalence?

21 A Not that I can recall.

22 Q When did you have this conversation with  
 23 Mr. Marcus regarding equivalence?

24 A We had an initial conversation about a week  
 25 before I came out here, where he said that we were

Page 24

1 said, "We're going to have to talk about this when you  
 2 visit our office." So, to answer your question, I  
 3 flew out on Sunday.

4 Q Did you and Mr. Marcus have an in-person  
 5 conversation regarding equivalence?

6 A Yes.

7 Q When did you and Marcus -- when did you and  
 8 Mr. Marcus have an in-person conversation regarding  
 9 equivalence?

10 A On Monday.

11 Q Monday, January 22, 2007; correct?

12 A Yes.

13 Q What did you and Mr. Marcus discuss  
 14 regarding equivalence in your January 22, 2007,  
 15 conversation?

16 MR. MARCUS: Objection. Asked and  
 17 answered.

18 A Mr. Marcus took me through a high-level  
 19 definition of equivalence and, if I recall, gave me  
 20 some simple examples; something like a handle -- a  
 21 bicycle with a handle bar of two different colors, or  
 22 something like that. I can't recall the exact -- the  
 23 exact analogy that he used.

24 And then -- and then asked me if I could  
 25 re -- if I could look through the report with the

Page 23

1 going to have to talk about it, because he had  
 2 forgotten to take me through that.

3 And then when I got here, we sat down and  
 4 he took me through that. So I'm going to say Monday  
 5 of this week.

6 Q Is it fair to say that Mr. Marcus initiated  
 7 the conversation with you regarding equivalence?

8 A Yes.

9 Q And Mr. Marcus initiated that conversation  
 10 with you regarding equivalence this week that we're  
 11 currently in; correct?

12 MR. MARCUS: Objection. Mischaracterizes  
 13 his prior testimony.

14 MR. PARKS: Let me reask the question.

15 BY MR. PARKS:

16 Q What day exactly did Mr. Marcus initiate  
 17 this conversation with you regarding equivalence?

18 A I can't recall what day the initial  
 19 telephone call came; it was -- it was a 30-second  
 20 phone call where he just said, "We're going to have to  
 21 talk about this when you -- when you come out here to  
 22 make sure you understand it."

23 Q And when you say, when you came out here,  
 24 what day are you referring to when you came out here?

25 A Excuse me. He -- when -- I should have

Page 25

1 principle of equivalence in mind, look through my  
 2 report with the principle of equivalence in mind.

3 Q Anything else?

4 A I'm sorry. What do you mean by, "anything  
 5 else"?

6 Q Did Mr. Marcus tell you anything else in  
 7 this conversation?

8 A You mean did he impart any information to  
 9 me, besides the principle of equivalence?

10 Q My question is, in addition to what you  
 11 have already testified that you and Mr. Marcus  
 12 discussed in the January 22, 2007, conversation, did  
 13 the two of you discuss anything else during that  
 14 conversation?

15 MR. MARCUS: Objection. Vague and  
 16 ambiguous.

17 A Anything besides equivalence?

18 Q Yes.

19 A Oh. Well, yes.

20 Q What else did you and Mr. Marcus discuss  
 21 during this January 22, 2007, conversation?

22 MR. MARCUS: I am just going to sort of --  
 23 you know, I know that everybody has given each other  
 24 some leeway, but we do have an agreement here in place  
 25 about communications with experts and --

7 (Pages 22 to 25)

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Tel: (800) 868-0061 (312) 263-3524

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C11

Brian G. Agee, Ph.D. January 24, 2007

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<p>1 MR. PARKS: I completely disagree that we 2 have an agreement of the kind that you are referring 3 to. 4 MR. MARCUS: I think it's in writing, and 5 we've already had a discussion about it. 6 I mean, I will give you some leeway. You 7 can ask some stuff. But I think if you go too far, I 8 am going to have to, you know, kind of ask that we 9 actually honor the agreement. So...</p> <p>10 BY MR. PARKS: 11 Q You can answer the question. 12 A Okay. Could you repeat the question. 13 MR. PARKS: Could you read the question 14 back, please. 15 MR. MARCUS: So I guess just before you 16 read the question, I would like some clarification. 17 Are you saying you are not bound by any 18 agreements made by Andrew's prior counsel? 19 MR. PARKS: What I am telling you is that I 20 am not aware of any agreement in this case or anything 21 under the Federal Rules that allows you to communicate 22 as counsel with experts regarding changes and whatnot 23 to expert reports, and not have those discussed during 24 depositions. 25 MR. MARCUS: Well, I don't -- that, I</p>	<p>1 light of your conversation with Mr. Marcus regarding 2 equivalence? 3 A Yes. 4 Q Did the other look you took at your report 5 in light of your conversation with Mr. Marcus 6 regarding equivalence cause you to change any aspect 7 of your analysis? 8 A Yes. 9 Q What aspect of your analysis was changed by 10 virtue of you looking at your report again, at Mr. 11 Marcus' instruction, after a conversation regarding 12 equivalence? 13 A Again, on Page 13 of my report, the section 14 entitled "Kono fails to disclose or teach means for 15 processing said data frames from cell site systems, to 16 generate a table," the discussion of equivalence 17 caused me to change my analysis -- change the analysis 18 underlying this opinion. 19 Q Do you now have a revised analysis 20 regarding the opinions set forth on Page 13 of your 21 January report? 22 A Yes, I do. 23 Q What is your revised analysis of the 24 opinions set forth on Page 13 of your January report 25 regarding Kono allegedly failing to disclose or teach</p>
Page 27	Page 29
<p>1 wouldn't disagree with you with. But I think that 2 you're now going beyond that, is my point. And that's 3 what I think we have an agreement on, and I think you 4 are well aware of the letter. That's my only point. 5 MR. PARKS: Okay. 6 Could you read the question back, please. 7 (The reporter read the record as 8 requested.) 9 A (Continued.) Okay. And I'm going to ask 10 you if you could clarify what you mean by what else 11 did we discuss. 12 Q You testified that you and Mr. Marcus 13 discussed equivalence on January 22, 2007; correct? 14 A Correct. 15 Q In addition to equivalence, did you and Mr. 16 Marcus discuss anything else on January 22, 2007? 17 A I believe all of our conversations involved 18 the concept of equivalence as it was applied to my 19 report. 20 Q You testified that Mr. Marcus suggested 21 that you take a look at your report in light of your 22 conversation with him regarding equivalence; correct? 23 A Correct. 24 Q Did you in fact follow Mr. Marcus' 25 instruction and take another look at your report in</p>	<p>1 means for processing said data frames from said cell 2 site systems? 3 A May I refer to my documents here? 4 Q Yes. 5 A Okay. 6 So I developed a revised document, a 7 revised opinion -- a revised analysis for this 8 opinion, which I'd like to give you at this point. 9 THE WITNESS: You know, I think that was my 10 only copy. 11 MR. MARCUS: That's all right. I think I 12 have it. 13 MR. PARKS: Could you please mark this as 14 the next exhibit, please. 15 (Document marked for identification as Agee 16 Exhibit No. 3.) 17 BY MR. PARKS: 18 Q Dr. Agee, you just handed me a three-page 19 document that's been marked as Exhibit 3. 20 The first page of this document has a 21 heading that says, "Kono fails to disclose and teach 22 means for processing said data frames from said" -- 23 "from cell site systems, to generate a table"; 24 correct? 25 A Actually, it is a four-page document. But,</p>

8 (Pages 26 to 29)

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1 yes, correct.

2 Q Is it your testimony that the four-page  
3 document that's been marked as Exhibit 3 replaces a  
4 portion of either your December report or your January  
5 report?

6 A Yes; this replaces the equivalent section  
7 in either report.

8 Q What are the changes as compared with  
9 what's been marked as Exhibit 3 and the analysis set  
10 forth in your December and January reports?

11 A The primary change is that, in my original  
12 analysis, I was focusing primarily on the fact that  
13 Kono taught the correlation operation at the base  
14 stations.

15 They were performing the correlation  
16 against a unique word in the position location signal  
17 at the -- at the base stations.

18 Whereas, both Figure 6 and, as I was  
19 interpreting it minus the principle of equivalence,  
20 Figure 7 in the Andrew's and the TruePosition's claim  
21 constructions were, in my opinion at that time,  
22 teaching processing at the base -- at the central  
23 site.

24 So at that point in time I was focusing on  
25 that as the primary difference. It was the first or

1 the same patent.

2 Whereas, Stilps either correlated against  
3 the data that was received at the other cell sites or  
4 correlated against what they called an ideal  
5 reconstructed signal, the demodulated and remodulated  
6 control channel signal, reverse control channel  
7 signal, that was -- that was received on the strongest  
8 base station.

9 Q Was it Mr. Marcus who told you that the  
10 processing could be moved from the base station to the  
11 central site?

12 A No.

13 Q What is the basis for your more recent  
14 understanding that -- strike that.

15 What's the basis for your most recent  
16 opinion that the processing could be moved from the  
17 base station to the central site?

18 A Just to clarify, in -- in Stilps or Kono or  
19 both?

20 Q Both.

21 A My reasoning for that is that -- is that  
22 you get the same result if you perform the processing  
23 at the central site or at the base station. One, you  
24 get the same result.

25 Two, the primary reason to do it one place

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Page 33

1 second block in either of these figures.

2 If you looked at the first or second block  
3 in either of the figures that were -- that were cited  
4 in the Andrew's or the TruePosition claim  
5 constructions, they immediately diverge from what Kono  
6 was doing. So, I was focusing on that.

7 Once I understood the principle of  
8 equivalence, then it really had two consequences. One  
9 was that I felt, under the principle of equivalence,  
10 that -- that it wasn't enough for me to make a  
11 determination that Kono didn't anticipate based on the  
12 fact it was -- it was processing at the base stations  
13 because you could pull that processing into the  
14 central site, you could pull that processing into the  
15 central site.

16 And, because of that, I had to look deeper  
17 into the figures in order -- and focus on the other  
18 aspect of the -- of the -- of Kono and Stilps that was  
19 differentiating. So, I put more emphasis onto that.

20 The other aspect being that Kono, it -- in  
21 Kono, they correlate against the original unique word  
22 that was transmitted within the position location  
23 signal; whereas, in Stilps -- the '144 patent, excuse  
24 me -- I may refer to it as "Stilps," rather than "the  
25 '144 patent," from time to time. In both cases I mean

1 or another that was cited in the -- in the  
2 specification, which was cost, in the '144 patent is  
3 not covered by the claims.

4 The claims are mute as to where the  
5 processing occurs.

6 Q When you and Mr. Marcus discussed  
7 equivalence, did Mr. Marcus suggest to you that you  
8 look at any particular limitation in your report in  
9 light of your discussion regarding equivalence?

10 A Yes.

11 Q Which limitation did Mr. Marcus suggest you  
12 look at following your discussion regarding  
13 equivalence?

14 A I'm sorry, I'm not sure what you mean by  
15 the term "limitation."

16 Q Claim element.

17 A Oh, okay.

18 He asked me -- he didn't ask -- he asked me  
19 to look at my report, not at the claim elements.

20 Q Did Mr. Marcus identify any particular  
21 claim element that he suggested you take a look at?

22 A No.

23 Q Did Mr. Marcus suggest any particular claim  
24 for you to take a look at?

25 A No.

9 (Pages 30 to 33)

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<p style="text-align: right;">Page 146</p> <p>1 the same thing.</p> <p>2 So, for instance, in this case "identifying</p> <p>3 individual cellular telephone signals," and</p> <p>4 "identifying the cellular telephones," the way you've</p> <p>5 defined this, it's clear from the context that you</p> <p>6 want these to be the same thing.</p> <p>7 And in this case, I would agree, under this</p> <p>8 definition. And I treated them as the same, when I</p> <p>9 was developing my claim construction.</p> <p>10 Q So it's correct to say that the database</p> <p>11 claimed in Claim 32 of the '144 patent must identify</p> <p>12 the actual cellular telephones themselves that are</p> <p>13 being located; correct?</p> <p>14 MR. MARCUS: Objection. Vague and</p> <p>15 confusing.</p> <p>16 A Why don't you repeat the question back to</p> <p>17 me.</p> <p>18 MR. PARKS: Could you read it back, please.</p> <p>19 I'm sorry.</p> <p>20 (The reporter read the record as</p> <p>21 requested.)</p> <p>22 MR. MARCUS: Same objection. I also think</p> <p>23 it calls for a legal conclusion.</p> <p>24 A (Continued.) So I say that, under both</p> <p>25 claims constructions, the database would need to</p>	<p style="text-align: right;">Page 148</p> <p>1 first?</p> <p>2 MR. PARKS: Yes, let's mark them as the</p> <p>3 next two exhibits, so we have them in the record.</p> <p>4 (Documents marked for identification as</p> <p>5 Agee Exhibits No. 6 and 7.)</p> <p>6 (Discussion off the record.)</p> <p>7 VIDEO SPECIALIST: This is the end of Tape</p> <p>8 4 at 2:57.</p> <p>9 Short recess.)</p> <p>10 VIDEO SPECIALIST: We are on the record at</p> <p>11 3:13. This is Tape 5 of Brian G. Agee's deposition.</p> <p>12 BY MR. PARKS:</p> <p>13 Q Dr. Agee, is it your opinion that the Kono</p> <p>14 reference teaches a command response approach for</p> <p>15 location of a cellular phone occurs only after a</p> <p>16 command to locate is sent from the cellular network?</p> <p>17 A So I guess I'll ask you to clarify that.</p> <p>18 Q Can you turn to Page 16 of your December</p> <p>19 report. It is the one that's been marked as Agee</p> <p>20 Exhibit 1.</p> <p>21 A Right. Oh, got it. Okay.</p> <p>22 Q And if I could direct your attention to</p> <p>23 Subsection 3.3.1.3, where you're distinguishing the</p> <p>24 Kono reference from the '144 patent claims.</p> <p>25 And if you could read into the record the</p>
<p style="text-align: right;">Page 147</p> <p>1 contain data identifying the cellular telephones,</p> <p>2 either the cellular telephones or some number linked</p> <p>3 only with that mobile cellular telephone, jumping in</p> <p>4 between the two -- back and forth between the two</p> <p>5 claim constructions.</p> <p>6 Q How do you interpret the word "subscribers"</p> <p>7 in Claim 32 of the '144 patent?</p> <p>8 A As a comment, this isn't something I</p> <p>9 considered when I was writing my report, so I'm giving</p> <p>10 an answer that is off the cuff.</p> <p>11 I would interpret it the same way that I</p> <p>12 would interpret "subscribers" in -- in Element C of</p> <p>13 Claim 22.</p> <p>14 Q Dr. Agee, if we could mark as the next two</p> <p>15 exhibits the TruePosition claim construction and</p> <p>16 Andrew claim construction that you have been referring</p> <p>17 to as we've gone through that exercise.</p> <p>18 MR. PARKS: And, actually, I know we have</p> <p>19 been going for a while. If you -- I don't know how</p> <p>20 close we are on the videotape. But if you would like</p> <p>21 to take a break, we can take one now, or we can keep</p> <p>22 going. It's up to you.</p> <p>23 THE WITNESS: Why don't we take a short</p> <p>24 break.</p> <p>25 MR. MARCUS: Do you want to mark them</p>	<p style="text-align: right;">Page 149</p> <p>1 first bullet point that appears under Section 3.3.1.3</p> <p>2 of your December report.</p> <p>3 A Okay. "Kono fails to disclose or teach any</p> <p>4 locating means for automatically determining the</p> <p>5 locations of cellular telephones. Instead, it teaches</p> <p>6 a command respond approach in which position location</p> <p>7 only occurs after a command position location call is</p> <p>8 sent from either the exchange office based on</p> <p>9 unexplained criteria or the base transceiver station."</p> <p>10 Q And, so, my question, Dr. Agee, is, is it</p> <p>11 your opinion that Kono teaches a command response</p> <p>12 approach for location of a cellular phone occurs only</p> <p>13 after a command to locate is sent from the cellular</p> <p>14 network?</p> <p>15 A Yes, that's true.</p> <p>16 Q And in rendering the opinions expressed in</p> <p>17 your December report, you were distinguishing the '144</p> <p>18 patent from a system like Kono that locates a cellular</p> <p>19 phone only after a command to locate is sent from the</p> <p>20 cellular network; correct?</p> <p>21 MR. MARCUS: I am going to object. That --</p> <p>22 that is -- assumes facts not in evidence, somewhat</p> <p>23 misleading.</p> <p>24 A No, that was not my opinion. This was an</p> <p>25 error, that's why I took it out in the January report.</p>

38 (Pages 146 to 149)

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1 Q I want to focus on the opinions you had  
2 when you submitted your December report, for the time  
3 being. Okay?

4 A Okay.

5 Q When you submitted your December report,  
6 isn't it correct to say that you were distinguishing  
7 the '144 patent from a system like Kono that locates a  
8 cellular phone only after receiving a command from the  
9 cellular network to locate the phone?

10 MR. MARCUS: Objection. Asked and  
11 answered, misstates his testimony.

12 A Why don't you repeat the question again.

13 MR. PARKS: Could you read the question  
14 back, please.

15 (The reporter read the record as  
16 requested.)

17 A (Continued.) No.

18 Q What, then, was the purpose of including  
19 the language that's set forth in the first bullet  
20 point of Section 3.3.1.3 of your report that says  
21 exactly what I just asked in my prior question?

22 A At a point prior to submitting this report,  
23 well prior to submitting this report, I was of the  
24 opinion that you expressed.

25 Q And what opinion is that?

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1 A That -- that Kono -- that the fact that  
2 Kono teaches a command respond approach to -- to do  
3 its position location distinguishes it from the '144  
4 patent.

5 I had -- actually, can I keep going?

6 Q Please.

7 A Okay. So I was of that opinion at an early  
8 point in my analysis, and I abandoned that opinion  
9 well before this report went out.

10 What happened was that, I simply failed to  
11 take this terminology out of the report. It was a  
12 simple error on my part. It should have been out of  
13 the report when it was submitted in December.

14 Q When did you, as you just testified,  
15 abandon the opinion that's set forth in the first  
16 bullet point under Section 3.3.1.3 of your December  
17 report?

18 A After I -- I abandoned that opinion after I  
19 came to the realization that I was misunderstanding  
20 the word "initialize" in the '144 patent.

21 Q On what date did you come to the  
22 understanding that you were misinterpreting the word  
23 "initialize" in the '144 patent?

24 A Oh, I have no idea. Maybe a week in, a  
25 week into the analysis. I can't recall.

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1 Q Do you recall what month?

2 A Yes; it was in December.

3 Q Was it after December 22?

4 A No.

5 Q Was it after December 15?

6 A Possibly; probably.

7 Q How did you, as you testified, come to the  
8 realization that you made an error in your December  
9 report by including the language in the first bullet  
10 point under Section 3.3.1.3?

11 A So you're asking the process by which I  
12 came to that realization?

13 Q I'm trying to find out, yeah, how -- you  
14 testified that you made an error. How did the error  
15 come to your attention?

16 A The error came to my attention by  
17 continually -- by my continuous rereading of the Stip  
18 patent and the patent wrapper.

19 Q In terms of the language itself in your  
20 report that appears in the first bullet point of your  
21 December report under Section 3.3.1.3, did counsel for  
22 TruePosition first suggest to you that you change that  
23 language, that the language might be in error?

24 A No.

25 Q Was that a suggestion that you made on your

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1 own, independent of counsel for TruePosition?

2 MR. MARCUS: I am going to object. The  
3 question is vague. I think -- I am having a hard time  
4 understanding it.

5 A I think it was. It's -- I think it was.

6 It certainly wasn't a position that -- that  
7 I was -- that I was asked to take; that never -- no  
8 conversations of that sort ever occurred.

9 That's all I'll say right now. That's all  
10 I think I can say right now.

11 Q Before submitting your January report in  
12 which you deleted the language in the first bullet  
13 point of Section 3.1.3 of your December report, did  
14 you discuss with TruePosition's counsel deleting that  
15 language?

16 MR. MARCUS: I'm just going to make an  
17 objection. Just, you keep saying, "the bullet." I  
18 don't think he deleted everything. But that's...

19 A Okay. Can you read the question back to  
20 me.

21 (The reporter read the record as  
22 requested.)

23 A (Continued.) No.

24 Q After you submitted your December report,  
25 did you read through your December report?

39 (Pages 150 to 153)

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1 A No, I didn't.  
 2 Q If you didn't read your December report  
 3 after submitting it, how did it come to your attention  
 4 that you, as you testified, made an error in the first  
 5 bullet point that appears under Section 3.3.1.3 of  
 6 your December report?  
 7 A David Marcus called me up on January the  
 8 2nd and said, "Brian, I'm reading through your report,  
 9 and you made an error, I think. Why don't you go take  
 10 a look at this and tell me if you agree."  
 11 Q And how did you respond to Mr. Marcus'  
 12 statement?  
 13 A I said, "I'll look at the report," and I  
 14 did.  
 15 And as soon as I saw this, I realized this  
 16 was an error and called him back and said, "I made a  
 17 mistake. What should I do?"  
 18 Q And how did Mr. Marcus respond?  
 19 A He said, "Correct the mistake and send me a  
 20 corrected copy of the report." I did; within a half  
 21 an hour gave him a corrected copy of the report, which  
 22 was then sent on to you.  
 23 Q When you spoke with Mr. Marcus on January  
 24 2, did he suggest to you the alleged error in your  
 25 report under Section 3.3.1.3?

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1 MR. MARCUS: I am going to object to the  
 2 phrasing of that as misleading and mischaracterizing  
 3 his testimony. He didn't say it was an alleged error;  
 4 he said it was.  
 5 A Yes, I stated it was an error.  
 6 Q When you spoke with Mr. Marcus on January  
 7 2, did he suggest to you that you made an error in the  
 8 first bullet point under Section 3.3.1.3 of your  
 9 report?  
 10 A I can't recall if he suggested to me that  
 11 he made an error or if he said, "Brian, you made an  
 12 error. Go take a look at it."  
 13 It was a fairly -- it was fairly clearly an  
 14 error. And -- and I -- and I could see that it was an  
 15 error as soon as I saw it. So, I don't know if the  
 16 term -- if the term "suggestion" is relevant here.  
 17 Q Prior to the January 2 conversation with  
 18 Mr. Marcus, is it fair to say that you did not believe  
 19 that you made an error in your report by including the  
 20 language that appears in the first bullet point under  
 21 Section 3.3.1.3 of your December report?  
 22 MR. MARCUS: Objection. Mischaracterizes  
 23 his testimony.  
 24 A Prior to January 2, I was not aware that I  
 25 had made an error in my report. I had not looked at

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1 my report since I turned it in on the 22nd of  
 2 December.  
 3 Q Do you know who Louise Stilp is, Dr. Agee?  
 4 A Yes.  
 5 Q Who is Louise Stilp?  
 6 A He is one of the inventors of the '144  
 7 patent.  
 8 Q Have you ever spoken with Mr. Stilp?  
 9 A No, I haven't.  
 10 Q Do you know who Curtis Knight is?  
 11 A Yes, I do.  
 12 Q Who is Curtis Knight?  
 13 A He is one of the inventors of the '144  
 14 patent.  
 15 Q Have you ever spoken with Mr. Knight?  
 16 A No, I have not.  
 17 Q Who is John Webber?  
 18 A Just make sure.  
 19 It is a trick question; right?  
 20 Q Didn't mean for it to be a trick question.  
 21 I apologize.  
 22 Let me ask it this way: John Webber is a  
 23 named inventor on the '144 patent; right?  
 24 A That's correct.  
 25 Q Have you ever spoken with Mr. Webber?

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1 A No, I have not.  
 2 Q Can you please turn to Page 10 of your  
 3 December report.  
 4 And I'll tell you what my question is, I  
 5 will give you a chance to read it.  
 6 A Okay.  
 7 Q The third paragraph from the bottom that  
 8 begins with, "From this passage" --  
 9 A Okay.  
 10 Q -- appears to be purporting to distinguish  
 11 the timing taught by Kono with the way GPS signals are  
 12 used in the '144 patent.  
 13 And my question is, can you explain to me  
 14 how the language you have in the third paragraph from  
 15 the bottom on Page 10 of your December report differs  
 16 from the way GPS signals are used in the '144 patent?  
 17 MR. MARCUS: Can you read that whole thing  
 18 back to me.  
 19 (The reporter read the record as  
 20 requested.)  
 21 MR. MARCUS: I object that that's a --  
 22 assumes facts not in evidence, is vague and ambiguous,  
 23 somewhat confusing.  
 24 A So this passage is addressing the ways --  
 25 the way timing information is generated in Kono. And,

40 (Pages 154 to 157)

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<p>1 Q Oh, if you look at Page 5.</p> <p>2 A Oh, I was looking at Page 6. My apologies.</p> <p>3 Yes, it is dated November 11, 2006. The</p> <p>4 Certificate of Service was dated December 11, 2006.</p> <p>5 Q Okay. But do you recognize this document</p> <p>6 as the document giving the TruePosition's proposed</p> <p>7 claim constructions that you used to formulate in</p> <p>8 coming to your opinions?</p> <p>9 A Yes, I do.</p> <p>10 Q And when you -- you referred to this today</p> <p>11 throughout the deposition, when you were talking about</p> <p>12 the proposed claim constructions.</p> <p>13 Is -- these are the two documents you were</p> <p>14 referring to; is that correct?</p> <p>15 A Yes; yes, they were.</p> <p>16 Q In forming the opinions that you expressed</p> <p>17 in your report, did you consider the prosecution</p> <p>18 history or file wrapper of the '144 patent?</p> <p>19 A Oh, yes.</p> <p>20 Q Referring again to Agee Exhibit 7, which</p> <p>21 was TruePosition's Cumulative Identification of Claim</p> <p>22 Terms and Proposed Constructions.</p> <p>23 When you were given this document, did you</p> <p>24 read through the claim constructions?</p> <p>25 A Yes, I did.</p>	<p>1 filled in other than the introduction and the section</p> <p>2 on legal summaries, or legal standards?</p> <p>3 A No, it did not.</p> <p>4 Q Would it be fair to characterize it as just</p> <p>5 a proposed outline for the way you would go through</p> <p>6 the report?</p> <p>7 MR. PARKS: Objection to the form of the</p> <p>8 question. Leading.</p> <p>9 A I -- with the exception of -- of the</p> <p>10 section on legal -- on -- with the exception of</p> <p>11 Section 3.1.</p> <p>12 Q On legal standards?</p> <p>13 A Which was fairly complete; and which I was</p> <p>14 expected to understand, and not modify.</p> <p>15 Q Okay.</p> <p>16 A Yes.</p> <p>17 Q So with the exception of that particular --</p> <p>18 A Yes.</p> <p>19 Q And then you also did make changes to the</p> <p>20 introduction section; is that correct?</p> <p>21 A Yes, I did.</p> <p>22 Just for what it's worth, I might add that,</p> <p>23 in Section 3.1 I did reformat some of it. Because you</p> <p>24 lawyers like really long run-on sentences, and I was</p> <p>25 having a really hard time parsing one or two of them.</p>
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<p>1 Q And did you agree with the claim</p> <p>2 constructions?</p> <p>3 A After I went through them and fully</p> <p>4 understood them, yes, I did agree with them.</p> <p>5 Q Okay. When you were given Agee Exhibit 6,</p> <p>6 which is Preliminary Claim Constructions As of</p> <p>7 November 22, 2006, for Andrew, did you read through</p> <p>8 those claim constructions before formulating your</p> <p>9 opinions?</p> <p>10 A Yes, I did.</p> <p>11 Q And did you agree with their claim</p> <p>12 constructions?</p> <p>13 A On several counts, no, I didn't.</p> <p>14 Q Okay. And in your report did you express</p> <p>15 some of your disagreements?</p> <p>16 A Yes, I did.</p> <p>17 Q Okay.</p> <p>18 A Disagreements and ambiguities.</p> <p>19 Q Okay. I think earlier today you testified</p> <p>20 that I provided you with, I believe you used the word,</p> <p>21 a draft of your report.</p> <p>22 Do you recall that?</p> <p>23 A Yes.</p> <p>24 Q Okay. In the -- in the draft that you</p> <p>25 testified that I provided you, did it have any text</p>	<p>1 Q Okay.</p> <p>2 A So some of the nonlawyerly organization in</p> <p>3 there was actually added by me.</p> <p>4 Q If I could just have you look at Agee</p> <p>5 Exhibit 1 and Agee Exhibit 2.</p> <p>6 And Agee Exhibit 1, I believe, has been</p> <p>7 referred to today as your December report; is that</p> <p>8 correct?</p> <p>9 A Yes.</p> <p>10 Q And Agee Exhibit 2, I think, has been kind</p> <p>11 of referred to today at your January report; is that</p> <p>12 correct?</p> <p>13 A Yes.</p> <p>14 Q Okay.</p> <p>15 A My January 3 report.</p> <p>16 Q January 3 report.</p> <p>17 And I also believe, sort of, earlier today</p> <p>18 there was a question about whether the -- the report</p> <p>19 marked as Agee-2 was a supplement to your Agee Exhibit</p> <p>20 1.</p> <p>21 Do you recall that?</p> <p>22 A I recall that.</p> <p>23 Q Okay. In the report that you served on</p> <p>24 January 2, marked as Agee Exhibit 2, you didn't add</p> <p>25 anything to the report; is that correct?</p>

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Brian G. Agee, Ph.D. January 24, 2007

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<p>1 A That's correct.</p> <p>2 Q Okay. You only deleted a few sentences; is</p> <p>3 that correct?</p> <p>4 A Yes.</p> <p>5 Q Okay. And that's because -- is it because</p> <p>6 you never intended to include those sentences to begin</p> <p>7 with --</p> <p>8 MR. PARKS: Objection to the form of the</p> <p>9 question. Leading.</p> <p>10 MR. MARCUS: Well, let me rephrase it.</p> <p>11 BY MR. MARCUS:</p> <p>12 Q The deletions, the sentences that were</p> <p>13 deleted out of the report marked as Agee Exhibit 2,</p> <p>14 was the reason that you took those out that you never</p> <p>15 intended them to be in there, when you served Agee</p> <p>16 Exhibit 1?</p> <p>17 MR. PARKS: Objection to the form of the</p> <p>18 question. Leading.</p> <p>19 A The section -- the sentences that I had</p> <p>20 removed were not intended to be in the document; they</p> <p>21 were erroneous, they did not reflect my opinion.</p> <p>22 Q And that's at the time -- they didn't</p> <p>23 reflect your opinions at the time you served your</p> <p>24 December report; is that correct?</p> <p>25 A That's correct.</p>	<p>1 You had asked me to look through the report</p> <p>2 and identify where -- where my -- my understanding of</p> <p>3 equivalence would have affected my analysis or my</p> <p>4 opinions.</p> <p>5 And I looked through the entire report, and</p> <p>6 this was the only section where there was -- where</p> <p>7 there were -- where there were substantive</p> <p>8 differences, or where my analysis would have been</p> <p>9 substantively changed.</p> <p>10 And I found, as I read it, that -- that my</p> <p>11 analysis was -- was so dependent on my</p> <p>12 misunderstanding of equivalence, that the only way I</p> <p>13 could -- I could -- I could express to this group the</p> <p>14 changes was to just rewrite the section.</p> <p>15 So I decided late last night that that's</p> <p>16 what I had to do.</p> <p>17 Q Okay.</p> <p>18 A And that's when I went and did this.</p> <p>19 Q So did I ask you to write what's been</p> <p>20 marked as Agee Exhibit 3?</p> <p>21 A No, you did not.</p> <p>22 Q Had you told me that you were going to be</p> <p>23 writing what's been marked as Agee Exhibit 3?</p> <p>24 A Not when -- not when I left the building</p> <p>25 last night.</p>
Page 175	Page 177
<p>1 MR. PARKS: Objection. Leading.</p> <p>2 A (Continued.) That's correct.</p> <p>3 Q Okay. I would like to look at what's</p> <p>4 marked as Agee Exhibit 3.</p> <p>5 I believe you testified that you drafted</p> <p>6 what has been marked as Agee Exhibit 3 last evening</p> <p>7 and then partially this morning; is that correct?</p> <p>8 A Yes, that's correct.</p> <p>9 Q When was the first time you showed what's</p> <p>10 been marked as Agee Exhibit 3 to me?</p> <p>11 A At -- somewhere between 7:30 and 8 o'clock</p> <p>12 a.m. this morning.</p> <p>13 Q So is it fair to say it was a couple of</p> <p>14 minutes before we walked into your deposition?</p> <p>15 A That's correct.</p> <p>16 Q Had I asked you to write anything regarding</p> <p>17 the section in your report titled "Kono fails to</p> <p>18 disclose or teach means for processing said data</p> <p>19 frames from cell sites, to generate a table"?</p> <p>20 A You had asked me to look through that</p> <p>21 section and ask myself what was -- what would</p> <p>22 change -- well, you had asked me to look through the</p> <p>23 report. And, once I identified that section as being</p> <p>24 where the -- where the issues were -- sorry. Let me</p> <p>25 back up.</p>	<p>1 I didn't know I was going to be writing</p> <p>2 this, when I left the building last night.</p> <p>3 Q And I just want to be clear, because I</p> <p>4 think there has been a lot of discussion today about</p> <p>5 claim construction. And I just want to make sure</p> <p>6 we're clear about what happened.</p> <p>7 When you formulated the opinions that you</p> <p>8 expressed in your reports today, or explained, where</p> <p>9 the parties provided claim constructions for specific</p> <p>10 terms in the '144 patent, or asserted claims of the</p> <p>11 '144 patent, is it correct that you always just used</p> <p>12 those proposed claim constructions to formulate your</p> <p>13 opinions?</p> <p>14 MR. PARKS: Objection to the form of the</p> <p>15 question.</p> <p>16 A Once I saw the claim constructions and once</p> <p>17 I understood the claim constructions, then from that</p> <p>18 point on I always used those claim constructions in</p> <p>19 formulating my opinions.</p> <p>20 So in some early drafts, before I saw the</p> <p>21 claims construction, I was -- I was doing it just</p> <p>22 based on common, ordinary usage; and probably within</p> <p>23 two or three days of starting the analysis, I was</p> <p>24 using the claims constructions.</p> <p>25 Q But when you reached your final opinions</p>

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C18

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

TRUEPOSITION, INC.,

Plaintiff and  
Counterclaim-Defendant,

v.

C.A. No. 05-00747-SLR

ANDREW CORPORATION,

Defendant and Counterclaim  
Plaintiff.

**ANDREW CORPORATION'S FIRST SUPPLEMENTAL  
RULE 26(a)(1) INITIAL DISCLOSURES**

Pursuant to Fed. R. Civ. P. 26(a)(1), defendant Andrew Corporation supplements its initial disclosures as follows:

**I. 26(a)(1)(A) Individuals**

Khalid Al-Mufti Andrew Corporation 140 Vista Centre Drive Forest, VA 24551 434-386-5300	Content and workings of certain components of Andrew's U-TDOA location system.
Andrew Beck Andrew Corporation 19700 Janelia Farm Blvd. Ashburn, VA 20147 703-726-5900	Content and workings of Andrew's U-TDOA location system.
Gary Brown Andrew Corporation 140 Vista Centre Drive Forest, VA 24551 434-386-5300	Financial and accounting information relating to Andrew's dealing with ETSI, 3GPP, Saudi Telecom Company and other potential customers.
John Carlson Andrew Corporation 19700 Janelia Farm Blvd. Ashburn, VA 20147 703-726-5900	Content and workings of Andrew's U-TDOA location system.

David Cushman Andrew Corporation 140 Vista Centre Drive Forest, VA 24551 434-386-5300	Financial and accounting information relating to Andrew's dealing with Saudi Telecom Company and other potential customers.
Mohamed Eissa Andrew Corporation 3 Westbrook Corporate Center Suite 900 Westchester, IL 60154 708-236-6600	Andrew's dealings with Saudi Telecom Company.
Mazin Fagiri Andrew Corporation 140 Vista Centre Drive Forest, VA 24551 434-386-5300	Content and workings of certain components of Andrew's U-TDOA location system.
Terry N. Garner Andrew Corporation 3 Westbrook Corporate Center Suite 900 Westchester, IL 60154 708-236-6600	Content and workings of Andrew's U-TDOA location system.
Doug Hall Andrew Corporation 19700 Janelia Farm Blvd. Ashburn, VA 20147 703-726-5900	Content and workings of Andrew's U-TDOA location system.
Iris Inbar Andrew Corporation 140 Vista Centre Drive Forest, VA 24551 434-386-5300	Content and workings of certain components of Andrew's U-TDOA location system.
Stuart Katz Andrew Corporation 140 Vista Centre Drive Forest, VA 24551 434-386-5300	Content and workings of certain components of Andrew's U-TDOA location system.
Joseph Kennedy Andrew Corporation 19700 Janelia Farm Blvd. Ashburn, VA 20147 703-726-5900	Development of Andrew's U-TDOA location system, content and workings of Andrew's U-TDOA location system, Andrew's dealings with Saudi Telecom Company.

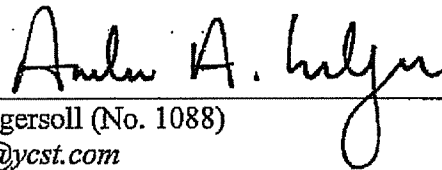
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Alan Li c/o Rachel P. Waldron Kirkland & Ellis LLP 200 E. Randolph Dr. Chicago, IL 60601	Andrew's dealings with Saudi Telecom Company.
James T. McDaniel Andrew Corporation 19700 Janelia Farm Blvd. Ashburn, VA 20147 703-726-5900	Content and workings of Andrew's U-TDOA location system.
Oskar Magnusson Andrew Corporation 19700 Janelia Farm Blvd. Ashburn, VA 20147 703-726-5900	Andrew's and TruePosition's dealings with 3GPP and ETSI.
Jim Petelle c/o Rachel P. Waldron Kirkland & Ellis LLP 200 E. Randolph Dr. Chicago, IL 60601	Prior settlement between Allen and TruePosition.
Randy Wynn 5329 Glade Lane Grapevine, TX	Andrew's dealings with Saudi Telecom Company.
Robert J. Anderson TruePosition, Inc. 1000 Chesterbrook Blvd., Suite 200 Berwyn, PA 19312	Information regarding the development, construction and operation of TruePosition wireless location systems;
Frederic Beckley TruePosition, Inc. 1000 Chesterbrook Blvd., Suite 200 Berwyn, PA 19312	Information regarding TruePosition's participation in ETSI, 3GPP, the TDOA System Study Group, and the UUAC.
Michael Hoppman TruePosition, Inc. 1000 Chesterbrook Blvd., Suite 200 Berwyn, PA 19312	Financial and accounting information relating to TruePosition and its products.
Joseph W. Sheehan TruePosition, Inc. 1000 Chesterbrook Blvd., Suite 200 Berwyn, PA 19312	Financial and accounting information relating to TruePosition's dealings with Saudi Telecom Company and other potential customers; information regarding the development, construction and/or operation of TruePosition wireless location systems; information regarding TruePosition's membership and participation in ETSI, 3GPP, and UUAC.

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Robert L. Gross 567 Gramercy Lane Downington, PA 19335-4839	Information regarding TruePosition's and Andrew's membership and participation in ETSI, 3GPP, the TDOA System Study Group, and the UUAC.
Curtis Knight 151478 23rd Avenue Keaau, HI	U.S. Patent No. 5,327,144 and the nature, invention, development, and patenting of the invention claimed therein.
Rhys Robinson 127 Fennerton Road Paoli, PA 19301	Information regarding TruePosition's and Andrew's membership and participation in ETSI, 3GPP, the TDOA System Study Group, and the UUAC.
Michael D. Stein, Esq. Woodcock Washburn LLP Wells Fargo Center 999 Third Avenue, Suite 1606 Seattle, WA 98104 206-332-1380	U.S. Patent No. 5,327,144 and the nature, invention, development, and patenting of the invention claimed therein.
Louis A. Stilp 1435 Byrd Drive Berwyn, PA 19312	U.S. Patent No. 5,327,144 and the nature, invention, development, and patenting of the invention claimed therein.
John C. Webber 3360 Brookside Drive Charlottesville, VA 22901	U.S. Patent No. 5,327,144 and the nature, invention, development, and patenting of the invention claimed therein.
Stuart C. Schwartz Department of Electrical Engineering Engineering Quadrangle, Olden Street Princeton, NJ 08544	Mr. Schwartz's prior expert report and previous positions taken on behalf of TruePosition regarding the scope of U.S. Patent No. 5,327,144.

YOUNG CONAWAY STARGATT &amp; TAYLOR, LLP



Josy W. Ingersoll (No. 1088)

*jingersoll@ycst.com*

Andrew A. Lundgren (No. 4429)

*alundgren@ycst.com*

The Brandywine Building

1000 West Street, 17th Floor

P.O. Box 391

Wilmington, Delaware 19899-0391

302-571-6600

*Attorneys for Defendant Andrew Corporation***C22**

OF COUNSEL:

John M. Desmarais  
KIRKLAND & ELLIS LLP  
153 East 53<sup>rd</sup> Street  
New York, New York 10022  
(212) 446-4800

Michael A. Parks  
Rachel Pernic Waldron  
Shira J. Kapplin  
KIRKLAND & ELLIS LLP  
200 East Randolph Drive  
Chicago, Illinois 60601  
(312) 861-2000

Patrick D. McPherson  
DUANE MORRIS LLP  
1667 K Street, N.W., Suite 700  
Washington, DC 20006

Dated: January 24, 2007

**C23**

**CERTIFICATE OF SERVICE**

I, Andrew A. Lundgren, Esquire, hereby certify that on January 24, 2007, I caused copies of the foregoing document to be served upon the following counsel in the manner indicated:

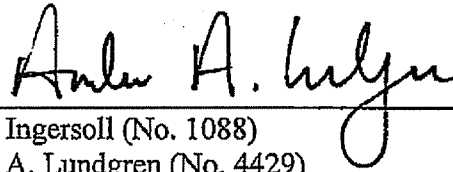
**BY HAND DELIVERY and E-MAIL**

James D. Heisman, Esq.  
Connolly, Bove, Lodge & Hutz  
The Nemours Building  
1007 North Orange Street  
P.O. Box 2207  
Wilmington, DE 19899  
(302) 658-9141  
*jheisman@cblh.com*

**BY E-MAIL and FEDERAL EXPRESS**

Paul B. Milcetic, Esq.  
David L. Marcus, Esq.  
Daniel J. Goettle, Esq.  
Woodcock Washburn LLP  
One Liberty Place, 46th Floor  
Philadelphia, PA 19103  
*pbmilcet@woodcock.com*  
*dmarcus@woodcock.com*  
*dgoettle@woodcock.com*

YOUNG CONAWAY STARGATT & TAYLOR, LLP



Josy W. Ingersoll (No. 1088)  
Andrew A. Lundgren (No. 4429)  
The Brandywine Building  
1000 West Street, 17th Floor  
Wilmington, Delaware 19801  
(302) 571-6600  
*alundgren@yest.com*  
*Attorneys for Defendant Andrew Corporation*

**C24**

**CERTIFICATE OF SERVICE**

I, Francis DiGiovanni, hereby certify that on this 26<sup>th</sup> day of February, 2007, I caused a true and correct copy of the foregoing **APPENDIX C TO TRUEPOSITION'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT THAT ANDREW CANNOT PROVIDE ITS CLAIMS OF INVALIDITY C1-C24** to be served upon the following individuals in the manner indicated below:

***Via hand-delivery***

Josy W. Ingersoll, Esq.  
Young Conaway Stargatt & Taylor, LLP  
100 West Street, 17th Floor  
Wilmington, DE 19801  
[jingersoll@ycst.com](mailto:jingersoll@ycst.com)

***Via e-mail***

Patrick D. McPherson, Esq.  
Duane Morris LLP  
1667 K Street, N.W.  
Washington, DC 20006-1608  
[PDMcPherson@duanemorris.com](mailto:PDMcPherson@duanemorris.com)

***Via e-mail***

Rachel Pernic Waldron, Esq.  
Kirkland & Ellis LLP  
200 East Randolph Drive  
Chicago, IL 60601  
[rpernicwaldron@kirkland.com](mailto:rpernicwaldron@kirkland.com)

***/s/ Francis DiGiovanni*** \_\_\_\_\_

Francis DiGiovanni (# 3189)